THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.23909 of 1999

Dated : 25.04.2007

Between:

M/s Antiquity, a Proprietary concern,
rep., by its Proprietor Dr.D.S.Deena Dayal.

... **PETITIONER**

And:

Union of India, rep., by its Director General,
Archaeological Survey of India (Antiquity),
Janpath, New Delhi and others.

....**RESPONDENTS**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.23909 of 1999

ORDER:

This writ petition is filed questioning the order of the first respondent dated 24.07.1997, and the consequential orders dated 28.10.1998 and 23.08.1999, passed by the Deputy Commissioner of Customs and Central Excise, Hyderabad-II and the Commissioner of Customs and Central Excise (Appeals), Hyderabad, respectively.

Petitioner is a proprietary concern carrying on business in contemporary art. During the course of its business, on 04.07.1994 petitioner purchased four Tanjore paintings from Tamil Nadu Art Emporium, Karaikudi for a sum of Rs.4,000/- each. Thereafter it sold the said paintings to one Dr.K.Bala of U.S.A., for a total consideration of Rs.68,000/- along with two Moughal wooden windows. Thereafter, the said articles were sent under consignment shipping bill No.906/96 dated 27.04.1996 to a clearing agent, by name Mytri Clearing Agency, a shipping company, and the Superintendent of Customs, ICD,

Sanathnagar, endorsed on the bill on 27.04.1996. Subsequently, on 06.05.1996, the Superintendent of Customs directed the concerned to open the wooden boxes and examine them and ensure that nothing objectionable is secreted. On examination, the Deputy Superintendent of Archaeology, Hyderabad Circle, reported that the said four Tanjore paintings are suspected to be antique. Thereupon, petitioner addressed letters dated 05.06.1996 and 07.11.1996 to the Assistant Commissioner of Customs, ICD, Sanathnagar, Hyderabad, clearly stating as to how these paintings are not objectionable, and requested him to reexamine the issue, but in vain. Thereafter, on 24.06.1997 the Commissioner of Customs and Central Excise addressed a letter to the petitioner stating that the Expert Committee has been constituted by the first respondent, which would examine the objects on 26.06.1997 at 10.00 A.M., in the office of the Superintendent, Archaeological Survey of India, Hyderabad Circle, and the petitioner was allegedly asked to appear before the Committee. Accordingly, the Proprietor of the petitioner concern went to the office of the Superintendent, Archaeological Survey of India, on the scheduled date and time, but petitioner alleges that its Proprietor was not examined. However, pursuant to the decision of the Committee, the first respondent passed an order on 24.07.1997 stating that the articles are antique within the meaning of Antiquities and Art Treasures Act, 1972, and directed the Superintendent, Archaeological Survey of India, Hyderabad, to take necessary action. Petitioner questioned the said proceedings before the Deputy Commissioner of Customs, who, by an order dated 28.10.1998, confirmed the order of the first respondent and ordered confiscation of the paintings in question, and also levied penalty of Rs.30,000/- on the petitioner. Aggrieved thereby, petitioner preferred an appeal before the Commissioner of Customs and Central Excise (Appeals), who also confirmed the order of the Deputy Commissioner and the first respondent, vide order, dated 23.08.1999. Challenging the said orders, this writ petition is filed.

Respondents 2 and 3 filed counter-affidavit stating that personal hearing was given by the adjudicating authority before passing the order and therefore, there is no violation of principles of natural justice.

Heard the learned counsel for both the parities.

The main grievance of the petitioner is that he was directed to appear before the Expert Committee for the purpose of determining as to whether the paintings are antique or not and though the Proprietor of the petitioner appeared, the officers concerned did not call him into the office for the purpose of enquiry and thereafter, the order was passed on 24.07.1997 holding that the paintings in question are antique. Though counter-affidavit is filed on behalf of the respondents, the said aspect is not at all denied. According to the petitioner, the paintings in question are only contemporary art purchased from Tamil Nadu Art Emporium and they look like antique, but in reality, they are not antique. As the petitioner was not given sufficient opportunity to explain that the said paintings are not antique and they are only contemporary art, and as the said fact was not denied by the respondents in their counter-affidavit,

I deem it appropriate to remand the matter to the first respondent-Director General, Archaeological Survey of India, (Antiquity) Janpath, New Delhi, for fresh consideration. It is needless to say that the petitioner shall be asked to appear for the enquiry before the authority concerned, and the petitioner is at liberty to produce the material available with it to establish that the paintings in question are only contemporary Art, but not antique.

With the above observation, the writ petition is allowed setting aside the order dated 24.07.1997 passed by the first respondent and also the consequential orders dated 28.10.1998 and 23.08.1999 passed by the Deputy Commissioner of Customs and Central Excise, Hyderabad-II and the Commissioner of Customs and Central Excise (Appeals), Hyderabad, respectively.

sh 25.04.2007